

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA

DUKE IMPORTS INC.,	:	
	:	
Plaintiff,	:	Civil Action No.
	:	
v.	:	
	:	
ALL THAT JAZZ TRADING LLC,	:	COMPLAINT
	:	
Defendant.	:	
	:	

COMPLAINT

Plaintiff, Duke Imports, Inc., by and through its undersigned counsel, files this Complaint against Defendant, All that Jazz Trading LLC, and alleges in support thereof the following:

PARTIES

1. Plaintiff, Duke Imports, Inc. (“Duke Imports”), is a New York corporation with its principal place of business at 1105 Williams St., Angola, Steuben County, Indiana.
2. Defendant, All that Jazz Trading LLC (“All That Jazz”), is a Michigan limited liability company with its principal place of business at 1200 N. Detroit St., LaGrange, LaGrange County, Indiana.

JURISDICTION & VENUE

3. This Court has jurisdiction under 28 U.S.C. § 1331 and 15 U.C. §1121, because the matter in dispute arises under the Lanham Act, specifically, 15 U.S.C § 1125(a), and this Court has supplemental jurisdiction under 28 U.S.C. § 1337 as to all remaining claims.

4. Venue is appropriate in this District under 28 U.S.C. § 1391 because the defendant is located in this District and a substantial part of the events or omissions giving rise to the dispute occurred in this District.

FACTS

5. Duke Imports is engaged in the wholesale business of selling bedding, blankets, towels, and related products.

6. In June 2014, Duke Imports filed an “intent to use” application with the United States Patent and Trademark Office (“USPTO”) for the wordmark BAMBOO LUXURY in connection with goods identified as bedding and other household textiles, namely, bed sheets, bedspreads, bath mats, blankets, comforters, coverlets, curtains, duvets, duvet covers, furniture protectors, mattress pads, pillowcases, pillow shams, quilts, shams, sheets, sheet sets and throws.

7. The USPTO published the mark for opposition in the Official Gazette in April 2015.

8. No opposition was received, and the USPTO issued a Notice of Allowance for the mark on June 16, 2015. The Notice of Allowance gave Duke Imports six months to file a Statement of Use certifying that it had made actual use of the mark in commerce.

9. In December 2015, Duke Imports filed a Statement of Use with the USPTO certifying that it first used the mark in commerce April 1, 2015. A true and correct copy of the Statement of Use along with the specimens showing Duke Import’s use of the mark that were filed with the USPTO are attached as Exhibit A.

10. The USPTO accepted the Statement of Use in February 2016 and formally registered the mark on March 22, 2016. Attached as Exhibit B is a true and correct copy of the Certificate of Registration.

11. All That Jazz is a locally-based competitor of Duke Imports. Like Duke Imports, All That Jazz is in the wholesale business of selling bedding, blankets, towels, and related products.

12. Duke Imports and All That Jazz attend many of the same trade shows and are aware, through attendance at those trade shows and general research, what products the other is selling.

13. As indicated in its Statement of Use filed with the USPTO, Duke Imports first began using the BAMBOO LUXURY mark in commerce in connection with the sale of sheets and other bedding products in April 2015.

14. All That Jazz knew or should have known that Duke Imports was using the mark BAMBOO LUXURY in connection with the sale of sheets and other bedding products.

15. With actual and/or constructive knowledge of Duke Imports' senior use and ownership of the BAMBOOK LUXURY mark, All That Jazz began selling sheets using the same BAMBOO LUXURY mark.

16. Duke Imports learned of All That Jazz's infringing use of the BAMBOO LUXURY mark after its Statement of Use was filed but before the USPTO formally registered the mark.

COUNT ONE
15 U.S.C. § 1125(a)

17. Duke Imports realleges and incorporates by reference rhetorical paragraphs numbered one (1) through sixteen (16) inclusive of this Complaint.

18. Duke Imports has used the mark BAMBOO LUXURY in connection with the sale of sheets and other bedding products since April 2015.

19. All That Jazz had both actual and constructive knowledge of Duke Imports ownership and senior use of the BAMBOO LUXURY mark prior to its infringing use of the mark.

20. All That Jazz offers its products under the infringing mark in the same channels of interstate commerce as those in which Duke Imports' products are offered.

21. All That Jazz's infringing use of the BAMBOO LUXURY mark is likely to cause and/or has caused, confusion, mistake or deception as to the affiliation, connection, origin or association of All that Jazz's products with those of Duke Imports in violation of 15 U.S.C. § 1125(a).

22. All That Jazz's actions constitute knowing, deliberate, and willful infringement of Duke Imports' mark. The knowing and intentional nature of the acts set forth herein renders this an exceptional case under 15 U.S.C. § 1117(a).

23. As a result of All That Jazz's infringing use of the BAMBOO LUXURY mark, Duke Imports has or is likely to suffer damages.

WHEREFORE, Plaintiff Duke Imports, Inc. demands judgment in its favor and against Defendant All That Jazz Trading LLC for damages, equitable relief, attorneys' fees, interest, costs of suits, and such other relief as the Court deems just and equitable.

COUNT TWO
Common Law Unfair Competition

24. Duke Imports realleges and incorporates by reference rhetorical paragraphs numbered one (1) through twenty-three (23) of this Complaint.

25. All That Jazz intentionally and fraudulently used the BAMBOO LIXURY mark to pass off its goods as those of Duke Imports and cause confusion as to the source of its goods.

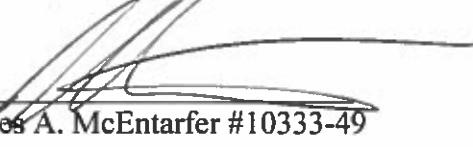
26. Duke Imports has or is likely to suffer damages as a result of All That Jazz's fraudulent use of the BAMBOO LUXURY mark.

WHEREFORE, Plaintiff Duke Imports, Inc. demands judgment in its favor and against Defendant All That Jazz Trading LLC for damages, equitable relief, attorneys' fees, interest, costs of suits, and such other relief as the Court deems just and equitable.

JURY DEMAND

Plaintiffs Duke Imports, Inc. demands trial by jury as to all issues so triable.

Respectfully submitted,

By: 
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